

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-13-1-5-00354-16  
45-004-15-1-5-01811-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-09-04-476-009.000-004  
**Assessment Years:** 2013, 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2015 assessments of his property located at 9301 Sunrise Boulevard in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the residential lot at \$4,600 (land only) for both 2013 and 2015.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On January 13, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: Property record card (“PRC”) for 2015-2019
  - Petitioner Exhibit B: PRC for 2011-2013
  - Petitioner Exhibit C: GIS map
  - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 739-29 W. 35<sup>th</sup> Avenue, Gary
  - Petitioner Exhibit E: PRC for 739-29 W. 35<sup>th</sup> Avenue (2015-2019)
  - Petitioner Exhibit F: Cover letter for Kovachevich appraisal for 2517-2525 Washington Street, Gary
  - Petitioner Exhibit G: PRC for 2517 Washington Street (2015-2019)

Petitioner Exhibit H:	PRC for 2521 Washington Street (2015-2019)
Petitioner Exhibit I:	PRC for 2525 Washington Street (2015-2019)
Petitioner Exhibit J:	Cover letter for Kovachevich appraisal for 1109 Oklahoma Street, Gary
Petitioner Exhibit K:	PRC for 1109 Oklahoma Street (2015-2019)
Petitioner Exhibit L:	2019 tax bill for 1109 Oklahoma Street <sup>1</sup>

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

**BURDEN OF PROOF**

- 5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
- 6. The property’s assessment did not change from 2012 to 2013 or from 2014 to 2015. Nowacki bears the burden of proof for both years under appeal.

**OBJECTIONS**

- 7. The Assessor objected to Petitioner Exhibits D-L. He argued they were not relevant to the proceeding. He also argued that the supporting appraisals are inadmissible as they were prepared solely for use by the Assessor’s office, and Nowacki is not an intended or authorized user. The ALJ took the objections under advisement. Because the exhibits provide information regarding other Gary properties, they do have at least minimal relevance to this proceeding. The Board is in no position to know or address how Mr. Nowacki obtained these documents. Whether Nowacki is listed as an intended or authorized user for these appraisals is not a sufficient reason to exclude them. We therefore overrule the objections, and note that these exhibits do not affect the outcome.

**SUMMARY OF CONTENTIONS**

- 8. Nowacki’s case:
  - a. The subject property has churned through the system since 1970 because it is over-assessed. Because of the over-assessment, Nowacki was able to acquire the property for a nominal bid of \$25. The property is valued on a front foot basis. Although the property is valued on a front-foot basis, there is no frontage because the road ends before it reaches the property. Had the Assessor correctly assessed the property, there

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<sup>1</sup> The Assessor submitted no exhibits.

would have been more interest at the auction. Nowacki is not arguing that the property's value is the \$25 that he paid for it. The land should be valued on an acreage basis because it is completely surrounded by unimproved property. Valuing it as acreage would bring the value closer to Nowacki's proposed value of \$3,200. *Nowacki testimony; Pet'r Exs. A, B, C.*

- b. The property was assessed at \$9,200 in 2011. Nowacki unsuccessfully appealed that value. The assessment dropped to \$4,600 in 2012. Nowacki contends the characteristics on the PRC are incorrect. Utilities are not available, and the streets and roads as shown do not exist. The neighborhood has the curious life-cycle designation of "other". *Nowacki testimony; Pet'r Exs. A, B.*
- c. The Assessor ordered appraisals of other properties for the purpose of investigating assessment problems in Calumet Township. Appraisals for the three properties represented in Exhibits D-L show they are over-assessed by 520% to 3,400%. This makes a convincing argument that the Calumet Township Assessor has over-assessed properties, and that the Lake County Assessor has been complacent and maybe even cooperative in over-assessing properties because no corrections were made to the assessments of these properties. *Nowacki testimony; Pet'r Exs. D-L.*

9. The Assessor's case:

- a. Nowacki failed to show that the subject property was comparable to the properties in Exhibits D-L. Nowacki also presented no substantive evidence relating to the value of the subject property or comparison of the subject property's attributes to the properties in Exhibits D-L. The change in value from 2011 to 2012 was due to a -50% influence factor applied to reflect the lack of accessibility to the property. Nowacki's testimony is speculation and personal opinion. The Assessor requests no change to the assessed value for either year. *Metz testimony; James testimony.*

#### ANALYSIS

10. Nowacki failed to make a case for reducing the 2013 and 2015 assessments. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.

- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.; see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Normally a party does not make a case for changing an assessment simply by showing how the DLGF's assessment guidelines should have been applied. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") Instead, the party must offer relevant market-based evidence. *See id.* The assessment date for both 2013 and 2015 is March 1<sup>st</sup>. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessment should be \$3,200 for both 2013 and 2015, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Nowacki claims that the appraisals show the three comparable properties are over-assessed, therefore the subject property must also be over-assessed. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court has previously held, "when a taxpayer challenges the uniformity and equality of his or her assessment, one approach he or she may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals." *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).
- e. Nowacki's data for the three properties is insufficient to support a uniform and equal argument. Not only did Nowacki provide incomplete appraisals, he failed to compare

the properties to the subject property. He did not address similarities or differences. Although Nowacki presented data for other Lake County properties, he did not show that his incomplete data met the standards of a ratio study or constituted a statistically reliable sample.

- f. Nowacki further contends the land should be assessed on an acreage basis rather than front-footage, which he claims the Assessor used to calculate assessed value. He also argues that the characteristics on the property record card are not accurate. These arguments go solely to the methodology used by the Assessor. Nowacki did not show how changes to the property record card would affect the market value-in-use of the property. Even if the Assessor made errors, simply attacking their methodology is insufficient. *Eckerling* at 678. Instead, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*
- g. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2013 or 2015, he failed to make a prima facie case for lower assessments. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the assessments.

ISSUED: April 15, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.